

From: Bob Pine

To: CALFED files

Subject: May 15, 1997 meeting on CALFED Programmatic HCP

Date: 5/16/97

Personnel involved: Bob Pine, Jean Elder

Wendy Halverson, Frank Piccola

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- ◆ Group met in small CALFED conference room. Meeting was called as a result of cancellation of 5/16/97 meeting due to scheduling conflicts for many of the participants and had discussion of the programmatic CALFED HCP. Wendy provided a handout that showed Mary Schoonovers outline design for developing a programmatic HCP.
- ◆ A discussion ensued on the areas to be included in the HCP. The geographic areas were: (1) legal Delta, (2) the Bay including near shore marine, (3) north Central Valley-Sacramento River Region, and (4) south Central Valley-San Joaquin River Region. I commented that in reality, the areas to be covered would be defined by effects of the action and the species to be covered. Discussion about what "coverage" means concluded with a general ESA definition concerning incidental take coverage meaning take was allowed if within range of estimated take and if adequate mitigation provided; discussion also included that coverage would probably be greater in some areas like the Delta and less in other areas like the Sacramento River Region. It is currently uncertain whether an estimation of incidental take will result at the programmatic level and thus there might not be immediate issuance of a section 10 permit with finalization of the programmatic HCP. Examples include a framework that could be put in place where section 10 authorization of take would be permitted as incidental take is calculated for each action during Phase III of the CALFED process and mitigation is provided; another possibility is that a range of incidental take might be estimated in the programmatic HCP with a range of mitigation provided commensurate with the level of take thus allowing issuance of the section 10 permit upon finalization of the HCP.
- ◆ A list of the Proposed Program activities on the outline that included: (1) Ecosystem Restoration program, (2) Water Quality program, (3) Water Use Efficiency program including water transfers, (4) Levee System Integrity program, (5) Storage Facilities including conjunctive use, and (6) Conveyance Facilities.
- ◆ Wendy mentioned that in the fall of 1997 PEIS, the HCP process would be characterized as "an ongoing process". Progress was not expected to be made toward a draft HCP beyond the existing draft matrix prepared by CALFED staff. Funding is not available for a consultant and time is needed for defining what the programmatic HCP would be. The proposed timing for issuance of a draft HCP was spring on 1998 with finalization in fall of 1998. This might be unrealistic but is consistent with the schedule for the EIR/EIS).
- ◆ Service areas were briefly discussed. Currently, the statement of work for the HCP does not specifically reference service areas but does not preclude their inclusion. At another HCP meeting, the general consensus was that service area effects from past SWP

operations would be addressed by Department of Water Resources. The Service has a concern that if the SWP service area effects are not addressed, there is the potential for a lawsuit.

- ◆ The issue of the permit holder was discussed briefly. A Joint Powers Authority that would hold the section 10 permit was mentioned as one mechanism for dealing with this. How the federal lead agencies will be included in the consultation process and whether the section 7 on the HCP or a separate section 7 should be done to cover the federal actions has not been determined.
- ◆ Wendy stated that a mechanism for addressing changed, extraordinary, or unforeseen circumstances should be developed for the programmatic HCP. I stated that this was something that was done for all HCP's and should be possible for this one.
- ◆ Funding and the implementing agreement was briefly discussed. Phasing and tiering of the funding for mitigation with the start of construction or operation of facilities was mentioned.
- ◆ Clearly articulated assurances would be important with varying levels of assurances provided for various aspects of the program. Jean asked what this might mean. I said that it might mean the application of the "No Surprises" policy for some geographic regions, some actions, with some species depending on the mitigation of effects for the incidental take of the individuals of species. Mary Schoonover had suggested using the "No Surprises" policy and possibly the Safe Harbor Program to provide some assurances. This latter was hoped to make the program more palatable to farmers who were involved in restoration actions. Other mechanisms were also sought to allow this program to proceed.